COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers	D.T.E. 03-60

AT&T'S PROPOSED SCHEDULE FOR THIS PROCEEDING

AT&T Communications of New England, Inc. ("AT&T") respectfully submits the following procedural schedule for the remainder of this proceeding, for the reasons discussed briefly below.

I. MASS MARKET SWITCHING AND DEDICATED TRANSPORT.

Verizon has indicated in its initial filing that it intends to go forward with a triggers-based challenge to the national findings that CLEC market entry is impaired without access to unbundled mass market switching and dedicated transport at the DS1 or DS3 levels. Verizon asserts that it bases its claims on substantial underlying data, but failed to provide that data as part of its case. Before CLECs can begin to prepare responsive testimony, they will need to obtain all of this data from Verizon in electronic form, analyze it, and test it through discovery. That will take some time. The important issues that CLECs will need adequate time to investigate and analyze, all before submitting responsive testimony, include the following.

With respect to unbundled mass market switching, the TRO makes clear that the triggers analysis is a two-part and fact-intensive exercise. The Department is tasked both with defining the relevant geographic areas or zones within which the triggers will be applied (TRO ¶¶ 495-96) and with undertaking an assessment of whether there are self-provisioning CLECs present in the

relevant market who are "actively providing voice service to mass market customers in the market" in a manner which "indicates that existing barriers to entry are not insurmountable." *TRO*, ¶¶ 499, 501. The TRO delineates a host of factors that are relevant to both stages of this analysis, all of which will be the subject of discovery and analysis.[1]

Specifically, as to each of the CLECs proffered by Verizon as candidates to count toward the triggers, AT&T and other parties will need to conduct discovery to determine how extensively those candidate CLECs "have been able to deploy such alternatives, to serve what extent of the market, and how mature and stable that market is." TRO ¶ 94; *see also*¶ 165.[2] With respect to intermodal alternatives, Verizon has proffered no evidence regarding whether such alternatives "are comparable in cost, quality, and maturity to incumbent LEC services." TRO fn. 1549. That will have to be investigated. We will also need clarity regarding which of the candidates identified by Verizon have deployed their own loop facilities, so that the Department may determine whether there is evidence that at least three competitors have been able to enter a market using both self-provisioned switching and loops. *See* TRO fn. 1560.

Finally, CLECs cannot be expected to be able to focus their discovery and analysis until they are able to see Verizon's complete case. When Verizon made its November 14 filing, it stated in its cover letter that it "was not able to take carriers' responses to the Department's First Set of Information Requests into account due to the timing of the carriers' responses and the

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[1] *See, e.g.*, AT&T's letter to the Department dated October 7, 2003.

[2] In a letter to the Department dated October 9, 2003, Verizon asserted that paragraph 94 of the TRO should be ignored by the Department as it undertakes the trigger aspect of the mass market switching impairment analysis, on the ground that paragraph 94 "do[es] not address the triggers analysis itself". That assertion is incorrect. In addition to the obvious fact that paragraphs 94 and 165 are part of the TRO, and that all of the FCC's guidance must be read as a coherent whole, the FCC has expressly indicated that state commission determinations of which CLECs should be counted toward the mass market switching triggers should be informed by Part V.B.1.d.(ii) of the TRO, which includes ¶ 94. *See TRO* fn. 1549.

filing date." It appears that Verizon is trying to leave open the possibility that it may either revise or augment the evidentiary basis for its claims. It will not be possible to complete this proceeding within the tight timeframes contemplated by the FCC unless Verizon is required to certify by a date certain that it has filed its complete case. This important procedural requirement is reflected in the schedule proposed below by AT&T.

II. NEW HOT CUT PROCESS PROPOSED UNILATERALLY BY VERIZON.

Verizon has proposed a brand new "batch hot cut" process that it never bothered to vet or discuss with any CLEC.

This is highly unusual. In this region, operational issues of general applicability – like the development of Operations Support Systems, business rules, and especially hot cuts – have always been handled on an industry basis with collaborative proceedings to reach such consensus as is obtainable, followed by formal adjudication of unresolved disputes. This is necessary because such processes and systems cannot be implemented unilaterally by Verizon, but instead require all carriers to be able to coordinate and integrate their internal processes and systems so that they work together without error and as efficiently as possible.

Verizon's failure to consult with CLECs before proposing a new batch hot cut process is also unlawful. Verizon may not deprive CLECs of their statutory rights to negotiate, and if necessary arbitrate, over the terms and conditions of access to UNEs as is set forth in 47 U.S.C. §§ 251(c)(3) and 252.[3] Section 252 provides for a period of negotiation to be followed, if

[3] See, Verizon North, Inc. v. Strand, 309 F.3d 935 (6th Cir. 2002). As established by Verizon North, a central purpose of the Telecommunications Act of 1996 is to afford CLECs the opportunity to negotiate and, if necessary, arbitrate agreements with ILECs concerning key terms and conditions of entry into the local market including, importantly, access to UNEs. Verizon North, 309 F.3d at 942-944. See also, MCI Telecommunications Corp. v. GTE Northwest, Inc., 41 F.Supp.2d 1157, 1176-78 (D.Or. 1999) (striking down state tariff provisions that dispensed with negotiation and arbitration process and forced CLECs to purchase services "off the rack" without an interconnection agreement).

needed, by arbitration upon petition to the state commission, with respect to issues covered by section 251, which includes access to UNEs.

Both as a practical and as a legal matter, the Department should not and may not attempt to adjudicate the adequacy of Verizon's new batch hot cut process until after the parties have attempted to reach agreement regarding the details of that proceeding. Although it is not at all obvious that a complicated new hot cut process can be figured out on the same schedule as adjudication of Verizon's other claims in this case, AT&T proposes that the parties attempt to do so. It would make sense to schedule a technical session in early December so that all parties can better understand Verizon's proposal. Thereafter the parties should be directed to attempt to work collaboratively to reach agreement regarding the specific parameters of the proposed new hot cut processes. If agreement is not reached, then the Department would have to arbitrate the specifics, determine the forward-looking cost associated with the new procedures, and determine whether they are adequately scalable. AT&T proposes that the parties be directed to provide the Department with a status report in late January 2004 so that the Department can determine whether to place these hot cut issues onto a separate track with a separate schedule.

III. PROPOSED SCHEDULE.

For the reasons discussed above, substantial discovery and analysis will be required before other parties will be able to file responsive testimony. AT&T proposes the following schedule, which should provide adequate time for the necessary work to analyze Verizon's claims, while ensuring that briefing is completed over a month before the Department must issue its final decision.

November 13, 2003	Discovery period opens (responses due 10 business days after service)
Early December, 2003	Technical Session re new Hot Cut Process
December 19, 2003	Verizon either to certify that its case is complete as filed on November 14, or file revised direct testimony with all supporting evidence upon which Verizon intends to rely and certify that its revised filing represents its complete case
January 27, 2004	Parties to File Status Report(s) re new Hot Cut Process, including whether a separate track and schedule are needed
February 24, 2004	CLECs file rebuttal case
March 2, 2004	Final date to serve discovery
March 23, 2004	Verizon and CLECs file reply testimony, if any
April 6-9, 12-13, 2004	Hearings
May 7, 2004	Initial Briefs
May 28, 2004	Reply Briefs
June 25, 2004	Department issues decision

Respectfully submitted,

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